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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-755

28 EAST JACKSON ENTERPRISES, INC.,
Petitioner,

vs.

P. J. CULLERTON, Individually, and as County Assessor, and BERNARD J. KORZEN, Individually and as Treasurer and Ex-Officio County Collector of Cook County,
Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (App. B of the Petition) is unreported. The opinion of the Court of Appeals for the Seventh Circuit and the opinion of Mr. Justice Swygert, dissenting in part (App. A of the Petition), are reported at 523 F. 2d 439 (7th Cir., 1975).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the Illinois court-created system of anticipatory injunctive relief set forth in *Clarendon Associates, Inc.* v. *Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973) constitutes a "plain, speedy and efficient" remedy to a taxpayer seeking to contest its real estate tax valuation.

STATUTES INVOLVED

The pertinent provisions of the Johnson Act (28 U.S.C. Sec. 1341) and the Civil Rights Act (42 U.S.C. 1983) are set out in the Petition at pp. 3-4.

STATEMENT OF THE CASE

The Petitioner is an Illinois corporation owning property subject to the real estate tax law of Illinois. Respondents are local tax officials charged with the assessment and collection of real estate taxes pursuant to Illinois law.* The subject matter of this case deals with local real estate taxes assessed against the petitioner for the year 1972, which taxes were payable in 1973.

In late 1973, the petitioner brought a civil rights action under 42 U.S.C. 1983 to enjoin the respondents from applying for the sale of petitioner's property for delinquent 1972 taxes. The petitioner asserted that 28 U.S.C. Sec. 1343(3) and 28 U.S.C. 1331 supported Federal jurisdiction in the case.

The petitioner's theory for relief was that its real estate assessment was "constructively fraudulent." Illinois courts have defined this term to include assessments of property at a level disproportionately higher than other similar property, and have, upon proper proof, given relief therefor. *People ex rel. County Collector* v. *Amer. Refrig. Co.*, 33 Ill. 2d 501, 505, 211 N.E. 2d 694, 697 (1965). However, the District Court ruled that petitioner's right to relief in the Illinois courts were not "plain, speedy and efficient" within the contemplation of 28 U.S.C. Sec. 1341.

The Court of Appeals, after a thorough review of Illinois law apposite to the case, reversed the District Court.

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* Thomas M. Tully, the present Assessor of Cook County, is the successor in office to Respondent P. J. Cullerton. Edward J. Rosewell, the present Treasurer and Ex-Officio County Collector of Cook County is the successor in office to Respondent Bernard J. Korzen.

ARGUMENT

I.

THE DECISION OF THE COURT OF APPEALS IS CLEARLY CORRECT

The petitioner's property is alleged to have been assessed disproportionately higher than other similar property subject to taxation in Cook County, Illinois. This court has ruled that such discrimination, if proved, violates federally protected rights under the 14th Amendment to the United States Constitution. *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441 (1922); *Hillsborough Tp.* v. *Cromwell*, 326 U.S. 620 (1946). So also the courts of Illinois have held that an Illinois taxpayer who proves that his property is assessed at a level disproportionately higher than similarly situated property is entitled to relief. *People ex rel. Skidmore* v. *Anderson*, 56 Ill. 2d 334, 307 N.E. 2d 391 (1974). The substantive Illinois remedy for such a situation is reduction of taxes "to the amount they would have been had other locally assessed property been assessed at the same percentage of value as that of the objector." *People ex rel. County Collector* v. *Amer. Refrig. Co.*, 33 Ill. 2d 501, 505, 211 N.E. 2d 194, 697 (1965).* We suggest that a fair reading of the petition indicates that petitioner does not

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* The policy of Illinois law is to require taxpayers claiming excessive valuation to follow the statutory legal remedy set out at ch. 120, pars. 675, 716, Ill. Rev. Stat. 1973. That remedy requires payment under protest. Since the petitioner had insufficient funds to pay under protest, the Court of Appeals properly ruled that the legal remedy was unavailable to petitioner.

challenge the substantive manner in which Illinois courts remedy such "constructively fraudulent" assessments. Rather the petitioner asserts that there is in Illinois no *injunctive* remedy to correct a "constructively fraudulent" assessment such as was allegedly placed on its property; or, in the alternative that the extent of the injunctive remedy is uncertain.

At this point *Hillsborough Tp.* v. *Cromwell*, 326 U.S. 620 (1946) becomes distinguishable. In *Hillsborough* the laws of New Jersey failed to provide a substantive remedy meeting the standards required by *Sioux City Bridge Co.* v. *Dakota County, supra.* The New Jersey courts had held that a taxpayer who is over-assessed must seek to raise the valuation of all property which was under-assessed. *Hillsborough, supra*, at 624. This is clearly not the case in Illinois, since *Skidmore* and *American Refrigerator* authorize the relief contemplated by *Sioux City* and *Hillsborough.* The law is clear that 28 U.S.C. §1341 limits the jurisdiction of federal courts in the very tender area of state fiscal powers. *Great Lakes Bridge and Dock Co.* v. *Huffman*, 319 U.S. 293, 298-99 (1943); *Matthews* v. *Rogers*, 284 U.S. 521, 525 (1932).

The prime issue thus raised is whether Illinois courts will give a taxpayer injunctive relief where the taxpayer cannot follow the legal remedy. The respondents contend that *Clarendon Associates, Inc.* v. *Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973) answers the question in the affirmative.

As a practical matter, the ebb and flow of the scope of injunctive power authorized by the Supreme Court of Illinois has closely followed the economic trends and resultant needs of the community.

The policy against the unwise extension of injunctive relief was stated early in *Chicago, Burlington and Quincy R.R. Co.* v. *Frary*, 22 Ill. 34, 37 (1839) The rule that grew up in Illinois is that injunctive relief was available at any time to (1) enjoin a tax unauthorized by law* and (2) to enjoin a tax upon exempt property. The social policy behind the ready granting of injunctions in these situations is obvious. The authority of the tax is usually a legal question which the court can deal with quickly. Similarly property which ought to be exempt should be removed from the tax rolls as quickly as possible. However, the rule is not hard and fast. Thus, the florid 19th Century language of *Frary* allows that "there may be cases the particular circumstances, a peculiar hardship of which, will justify an exception to this general rule." *C.B. & Q. R.R.Co.* v. *Frary*, 22 Ill. 34, 37 (1859). The Illinois Supreme Court in *Clarendon Associates* v. *Korzen*, 56 Ill. 2d 101, 306 N.E. 2d 299 (1973) dealt with the real threat that the scope of injunctive relief in Illinois might, as feared in *Frary*, and as pointed out in *People ex rel. Schweitzer* v. *The Orrington Co.*, 360 Ill. 289, 195, N.E. 642 (1934), over-extended itself, and threatened to inundate the courts with unwarranted claims for anticipatory relief. *Clarendon* reasonably established the rule that injunctive relief should be granted where the taxpayer states facts showing special grounds justifying injunctive relief (i.e. such as "constructive fraud"), and where the remedy at law is unavailable.

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* A tax unauthorized by law has been often distinguished from an irregular tax. The former lacks authority for its imposition. *Searing* v. *Heavysides*, 106 Ill. 85 (1883); *Dee El Garage* v. *Korzen*, 53 Ill. 2d 1, 289 N.E. 2d 431 (1972). The latter generally arises in valuation cases, and must meet the "constructive fraud test" in Illinois before relief will be granted.

As pointed out by the Court of Appeals, *Clarendon* has been followed. See: *La Salle Nat'l Bk.* v. *County of Cook*, 57 Ill. 2d 318, 312 N.E. 2d 252 (1974); *Hoyne Sav'g & Loan Ass'n* v. *Hare*, 60 Ill. 2d 84, 322 N.E. 2d 833 (1974); *Exchange National Bank* v. *Cullerton*, 17 Ill. App. 3d 392, 308 N.E. 2d 284 (1st Dist. 1974).

We thus respectfully submit that the Court of Appeals ruled correctly that the law of Illinois clearly offered the petitioner an effective injunctive remedy. That a civil rights action in the federal courts might be a better remedy is not and should not authorize federal intervention into this important area of state sovereignty. *Bland* v. *McHann*, 463 F. 2d 21, 29 (5th Cir. 1972) *cert. den'd.* 410 U.S. 966 (1973).

II.

THE PETITION DOES NOT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW

We respectfully submit that the hard questions of federal law arising out of 28 U.S.C. Sec. 1341, and its underlying policy, have been fully answered by this court's opinions in *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293 (1943), and *Matthews* v. *Rogers*, 284 U.S. 521 (1932). Those cases establish the principles necessary to guide federal courts in their exercise of jurisdiction in the area of State fiscal operations.

Thus, the petitioner seeks not to persuade this court to interpret new law, but rather to redress the purported failure of the Court of Appeals to properly follow settled law. Accordingly, it is respectfully submitted the issue raised by the petitioner is unworthy of certiorari.

CONCLUSION

For the foregoing reasons the respondents respectfully pray that the petition for a Writ of Certiorari be denied.

Respectfully submitted,

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